STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 12, 2009
v	No. 284855 Wayne Circuit Court
ROOSEVELT STEELE, Defendant-Appellant.	LC No. 07-013306-FH

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Defendant was convicted by a jury of insurance fraud, MCL 500.4511(1), and making a false report of a felony, MCL 750.411a(1)(b). He was sentenced as an habitual offender, fourth offense, to concurrent prison terms of 46 months to 15 years for each conviction. He appeals as of right. We affirm.

On January 16, 2006, defendant reported to the police that he had been robbed and carjacked of his 2006 Impala. He reported the incident to his automobile insurance company and received payment of approximately $3,000.

Deputy Sheriff Smith received a "HEAT"[1] tip that there was a stolen black Dodge pickup truck at the rear of a house on Appoline Street. Joanne Huggins and her son Darryl Hamer lived at the home. On December 12, 2006, Smith responded to the address on Appoline Street and found the Dodge pickup and defendant's vehicle. At some point, the HEAT tipster informed that the man who drove the Impala into the backyard was a large heavyset individual, about six-foot, one-inch tall. Smith asked Huggins if she knew someone who might match that description. According to Smith, Huggins said that one of her son's friends fit that description and provided a street name, "Big Rose." Smith later showed her photographs, and she identified defendant as "Big Rose."

Smith later met the informant at a gas station approximately a block from the home, and while they were talking, Smith saw defendant and Hamer together in a white Charger that was

[1] HEAT is an acronym for Help Eliminate Auto Theft.

registered to defendant. However, in a conversation with Smith after defendant's arrest, he denied knowing Hamer.

Huggins's preliminary examination testimony was read into the record. She stated that Hamer sometimes worked on cars at that location. She did not know how the cars got into the backyard or how long the cars that the officer inspected had been there. She recalled that the cars were there at a time when there was snow on the ground.

With respect to her knowledge of defendant, she remembered Smith asking her about her son's friends, but testified that she could not recall whether her son had a friend who was approximately six foot, three inches and 300 pounds. She "didn't deal" with Hamer's friends. She knew defendant because he was her patient when she was a nurse, and in the hospital, they called him Big Rose. She was unsure when he was her patient, but it was before she retired in 1997. She also testified that she had known defendant for approximately 20 years. He was "a neighborhood kid" back in 1997 and she "couldn't forget him," but she did not think that she had seen him since 1997. She did not know if he ever came to her house.

Defendant testified that he was 15 years old when he was in the hospital and did not remember Huggins. Defendant initially testified that he did not know Darryl Hamer. He then testified that he knew Hamer as "Dirt Mike." He met him in October 2006 when Hamer asked if defendant wanted to buy a bag of videotapes. Defendant was driving a white Charger at that time. According to defendant, Hamer was not his "buddy", he had not gone to Hamer's house, and Hamer was never in defendant's Charger. Defendant stated that he did not know that "Dirt Mike" was involved until defendant saw him in the courtroom. Defendant had no explanation for how his car ended up in Hamer's backyard.

On appeal, defendant first argues that the trial court abused its discretion in denying his motion for a new trial on the basis that the verdict was against the great weight of the evidence. Specifically, he contends that Smith's testimony that he recognized defendant at the gas station from an image on the Internet was inherently incredible because the images are grainy. Defendant asserts that "[a]n individual's ability to make an identification of a person in a moving vehicle, seeing that individual in person for the first time ever, for a fleeting moment, based on having seen a picture on the internet, is so highly unlikely that it was not possible of being believed."

A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). Absent exceptional circumstances, the issue of credibility should be left for the trier of fact. *People v Lemmon,* 456 Mich 625, 642-643; 576 NW2d 129 (1998). Exceptional circumstances that may justify a new trial include testimony that is patently incredible or so inherently implausible that it could not be believed by a reasonable juror, testimony in defiance of physical realities, or witness testimony that was seriously impeached and the case marked by uncertainties and discrepancies. *Id.,* pp 643-644. This Court reviews the trial court's decision to grant or deny a motion for a new trial for an abuse of discretion. *Id*., p 648 n 27.

Smith's testimony that he recognized defendant at the gas station was not patently incredible or inherently implausible. Smith had previously shown Huggins a photograph of defendant. Smith had a "Secretary of State image" of him. We are not persuaded that the quality

of images available from the Secretary of State is so poor that a law enforcement officer's testimony that he recognized an individual from the image is incredible or implausible. The purpose of the photographs is for identification. In the absence of any proof to the contrary, one would expect that the quality is adequate to accomplish that purpose. The trial court's denial of defendant's motion for a new trial was not an abuse of discretion.

Defendant also claims that the evidence was insufficient to establish his guilt. When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The prosecution's case was built on the link between defendant and Hamer, and the unlikelihood that defendant's car would appear in Hamer's backyard if it had been stolen, as defendant reported. The link between Hamer and defendant required the jury to assess the credibility of the witnesses, and this Court will not disturb that assessment. *People v McGhee*, 268 Mich App 600, 624; 709 NW2d 595 (2005). From the evidence that defendant's car was discovered in the backyard of his associate, and they were together approximately one block from the home, one may infer that defendant's report of being carjacked and robbed at gunpoint by an unknown assailant was false. Although one could hypothesize other explanations for the presence of the car in Hamer's backyard, the prosecutor is not required to negate every reasonable theory consistent with defendant's innocence. *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995). The evidence was sufficient to support defendant's convictions.

Defendant argues that his sentences are disproportionate and invalid because the trial court did not have enough information to fashion an individualized sentence and did not state any reason for sentencing him at the high end of the sentencing guidelines range, despite indications of his potential to be a good citizen. He notes that he had the opportunity to plead guilty and receive a sentence of probation, but declined that offer at the advice of counsel, in part because a conviction might negatively affect his entrepreneurial efforts. Defendant presented these arguments to the trial court in a motion for resentencing, which the court denied.

This Court must affirm a sentence within the appropriate guidelines range unless the guidelines were incorrectly scored or the court relied on inaccurate information at sentencing. MCL 769.34(10). Defendant acknowledges that his minimum sentences are within the appropriate guidelines range, and he does not claim that there was an error in the scoring of the guidelines or that the court relied on inaccurate information. Therefore, we must affirm his sentences.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens